IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE V.KANGARAJ

CRIMINAL REVISION CASE NO.1889 of 2003
and
Crl.M.P.No.12396 of 2003

G.Vidya ... Petitioner/Petitioner

Vs.

S.Manivarma ... Respondent/Respondent

The above Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure as stated therein.

For petitioner : Mr.T.L.Ram Mohan
Senior Counsel for
Ms. R.Ashraf Khan and
T.Papiah Dharmaraj

For Respondent : Mrs.Rita Chandrasekaran for
M/s Aiyar & Dolia

O R D E R

The above Criminal Revision Case has been filed praying to set aside the order dated 28.10.2003 made in M.C.No.180 of 2003 by the Court of II Additional Family Judge, Chennai and to award a maintenance of Rs.50,000/- per month to the petitioner.

2. Tracing the history of the case, what comes to be known is that the petitioner herein has filed a petition under Section 125 of Cr.P.C. against the respondent claiming maintenance of Rs.50,000/- p.m. from the date of petition on the ground that the petitioner and the respondent got married on 26.2.2001 according to Hindu rites and customs; that after the marriage they lived as man and wife from 26.2.2001 to 13.3.2001 and during that time the marriage was not consummated due to the desertion by the respondent/husband and he went to U.S.A. and thereafter he called the petitioner to stay with him in America; that he had no normal sexual relationship with the petitioner and thereby the petitioner suffered cruelty; that the respondent did not change his attitude and he sent her back to India; that the petitioner at present is unemployed, on the other hand the respondent is a Software Engineer, getting a salary of Rs.1,00,000/- per month, but he is not providing maintenance to the petitioner and hence the petition before the trial court.

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3. In the counter affidavit filed by the respondent before the trial court, besides denying the general allegations in the petition, he would further submit that the petitioner alone ignored the respondent and she picked up quarrels with the respondent; that even in America, she did not change her attitude; that in view of the fact that the petitioner treated the respondent cruelly, he is not liable to pay any maintenance; that the petitioner is leading a luxurious life by earning, she is not entitled for maintenance; that it is false to state that the marriage was not consummated. On such averments, he would pray for dismissal of the above petition.

4. The learned trial Court having considered the pleadings of the parties, having framed its own points for determination of the questions involved in the above petition and having discussed the same in the manner known to law would ultimately direct the respondent to pay a monthly maintenance of Rs.4,000/- in favour of the petitioner from the date of petition i.e. from 3.6.2003. Aggrieved by the said order of the Family Court, the petitioner has come forward to file the above Criminal Revision Case on certain grounds as brought forth in the grounds of revision.

5. During the arguments the learned counsel appearing on behalf of the petitioner besides reiterating the factual averments of the petition would also cite the following two judgments respectively reported in

(i) MAJOR ASKOK KUMAR SINGH Vs. VI ADDL. SESSIONS JUDGE, VARANASI AND OTHERS (1995 [(2] CTC 457); and

(ii) RAMESH BABU & ANOTHER Vs. TMT. USHA & ANOTHER (II [2003] DIVORCE & MATRIMONIAL CASES P. 272)

6.So far as the first judgment cited above is concerned, the Honourable Apex Court held

> "We hold that where it is proved to the satisfaction of the Court that a husband is impotent and is unable to discharge his marital obligations, this would amount to both legal and mental cruelty which would undoubtedly be a just ground as contemplated by the aforesaid proviso for the wife's refusal to live with her husband and the wife would be entitled to maintenance from her husband according to this means".

Accordingly, it is held that the wife would be entitled to maintenance under Section 125 (1) of the Code.

7. In the second judgment cited, the learned single Judge of this Court has held that Free Legal Aid is no bar to claim maintenance when statutory provision enables parties to the said proceedings; that the duty of the Court is to consider the

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income of both the parties while arriving at the grant of maintenance and litigation expenses, on such arguments the learned counsel would ultimately pray to grant the relief extracted supra.

8. On the contrary, the learned counsel appearing on behalf of the respondent would also besides reiterating the factual position of the case of the respondent such as that the petitioner exhibited abnormal conduct with the respondent while she was living in America which even led to the extent of the petitioner seeking the police help and the U.S. Police giving severe warning to the extent that she would be kept in Lunatic Asylum if she repeated such abnormal conduct and would cite a judgment of the Honourable Apex Court reported in KAMALA DEVI AND OTHERS Vs. MOOL RAJ (1991 Supreme Court Cases [Criminal] 230) wherein, in a very short order, the Honourable Apex Court has held after hearing the learned counsel for the parties to the facts and circumstances of the case dealt with by the Honourable Apex Court, "It is rather difficult to sustain interference of the High Court in revision with the order of the learned Judicial 1st Class Magistrate granting to the appellant separate maintenance at Rs.400/- per month." Further commenting, "that the conclusion reached by the learned Magistrate that the offer made by the respondent to keep the appellant with him was not a genuine one but a mere pretense, was a finding arrived on a proper appreciation of evidence. There was no basis whatever for interference with that order by the High Court. We allow the appeal, set side the order passed by the High Court and restore that of the learned Judicial 1st Class Magistrate." On such arguments the learned counsel would pray to dismiss the above Criminal Revision case.

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this court is able to assess that it is a petition for maintenance filed before the trial court by the wife seeking to grant a monthly maintenance of Rs.50,000/- in her favour, since according to her right from the date of her marriage with the respondent on 22.6.2001 neither the marriage was consummated by cohabitation nor as the respondent treated her with dignity when she was living in America along with the respondent/husband as a result of which the petitioner without being able to bear with the mental and physical strain had to withdraw from the company of the Respondent, which she did and now is living with her parents. It would further be averred that nothing is being provided by the petitioner for her upkeep and maintenance in spite of the petitioner earning a sum of Rs.1 lakh per month from his job and therefore would seek for a monthly maintenance of Rs.50,000/- from her husband. The lower court having considered these averments and that of the objections of the other side further having its own discussions, would ultimately grant a sum of Rs.4,000/- per month. Aggrieved against this order passed by the lower court, the petitioner/wife has come forward to file the above Criminal Revision Case not only to set aside the order passed by the lower court but also to grant a monthly maintenance at Rs.50,000/- as it has been prayed for.

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10. On the contrary, it would be argued on the part of the respondent/husband that the petitioner was not cooperating for harmonious matrimonial life and was behaving in an indifferent manner and that it is false to allege that the marriage was not consummated but further stated as false that the respondent is getting a monthly income of Rs.1 lakh but only a sum of Rs.44,685/- and after deduction, his carry home salary is Rs.31,295/- as it could be seen from the Exhibit P-2 salary slip of the respondent for the month of June, 2003.

11. However, without any discussion or any reason assigned, the Family Court would arrive at the blunt conclusion to grant the monthly maintenance for a sum of Rs.4000/-, which according to the petitioner is meagre and disproportionate to the status of the husband and hence seeking a sum of Rs.50,000/- sought for to be granted she has filed the above revision before this Court.

12. So far as the cases of such nature are concerned, no doubt, the award of maintenance could be made depending on the inability of the petitioner/wife and the monetary status of the husband when the marriage and the separation of the couple are not in dispute. No doubt, it is the duty of the husband to maintain a wife providing all not only for her upkeep and maintenance but also for a decent livelihood. Though the Family Court Judge, Chennai has accepted that the husband's monthly salary is at Rs.44,685/- for granting her a very meagre sum of Rs.4000/- as maintenance in favour of the petitioner/wife, there is absolutely no reason assigned and therefore it has become necessary on the part of this Court to decide this issue determining the quantum of maintenance in a fit and proper manner in the circumstances of the case.

13. Befitting status of the husband whose admitted monthly salary is Rs.44,685/-, this Court is of the view that a substantial amount could be granted from out of the sum for the maintenance of his wife particularly since the petitioner is bereft of any source of income. In consideration of the standard of living of parties, the status of the husband and the requirement of the petitioner/wife, this Court is of the view that it is quite reasonable to award at least a sum of Rs.15,000/- (Rupees fifteen thousand only) as the monthly maintenance of the petitioner which would alone serve the ends of justice and hence the following order.

In result,

(i) The above Criminal Revision Case stands partly allowed to the extent indicated below;

(ii) The award of monthly maintenance at Rs.4000/- made by the Court below is modified and enhanced at the rate of Rs.15,000/- (Fifteen thousand only) per month;

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the respondent/husband is directed to pay the said enhanced sum of Rs.15,000/- per month to the petitioner/wife right from the date of the filing of the petition before the II Additional Judge, Family Court, Chennai in M.C.No.180 of 2003 with interest at the rate of 6% per annum towards the arrears of maintenance at this enhanced amount and with costs;

(iii) The above said Criminal Revision Case is ordered on the above terms; and

(iv) Consequently, connected Crl.M.P.No.12396 if 2003 is closed.

21.12.2004

ks

Sd/-
Asst. Registrar

/ true copy /

Sub Asst. Registrar

Copy to:

1. II Additional Principal Judge,
Family Court,
Chennai.

2.-do- Thro' The Principal Judge,
Family Court, Chennai.
1 cc to Mr.R.Ashraf Khan, Advocate, SR.56473

1 cc to M/s.Aiyar & Dolia, Advocate, SR.56841

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